

1 **R277. Education, Administration.**

2 **R277-122. Board of Education Procurement.**

3 **R277-122-1. Authority and Purpose.**

4 (1) This rule is authorized by:

5 (a) Utah Constitution Article X, Section 3, which vests general control and
6 supervision over public education in the Board;

7 (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's
8 duties and responsibilities under the Utah Constitution and state law; and

9 (c) Title 63G, Chapter 6a, Utah Procurement Code.

10 (2) The purpose of this rule is to adopt and incorporate by reference Title R33,
11 Purchasing and General Services, with exceptions as described in this rule.

12 **R277-122-2. Definitions.**

13 ~~[(1) "Manager of procurement" means a Board employee designated by the Board~~
14 ~~to be the head of the procurement unit as described in Section R277-122-4 and Section~~
15 ~~R33-1-3.]~~

16 (1) "Professional service provider" means a provider of a professional service as
17 defined in Subsection 63G-6a-103(61) and includes an expert in educational instruction
18 and teaching.

19 (2) "Responsible" means the same as that term is defined in Subsection
20 63G-6a-103 (75).

21 (3) "Responsive" means the same as that term is defined in Subsection 63G-6a-103
22 (76).

23 **R277-122-3. Incorporation of Title R33 With Exceptions.**

24 (1) The Board adopts and incorporates by reference Title R33, Purchasing and
25 General Services, as in effect on April 1, 2017, with the exceptions described in this
26 section.

27 (2) The Board does not adopt Section R33-8-101b.

28 (3) The Board adopts Section R277-122-5 in place of Section R33-9-103.

29 (4) The Board adopts Section R277-122-6 in place of Section R33-12-201.

30 (5) The Board adopts Section R277-122-8 in place of Section R33-12-608.

- (6) The Board adopts Section R277-122-9 in place of Subsections:
(a) R33-16-101a (2)(a); and
(b) R33-16-301 (4).
(7) The Board adopts Section R277-122-10 in place of Sections R33-5-104 and R33-5-107.
(8) The Board adopts Section R277-122-11 in place of Section R33-5-108.

R277-122-4. Head of the Procurement Unit Designated.

The Board designates the [~~manager of procurement~~] Board's Director of Purchasing as the head of the procurement unit.

R277-122-5. Cancellation Before Award.

- (1) A solicitation may be cancelled prior to a contract award if the head of the procurement unit determines the cancellation is:
(a) in the best interest of the Board; and
(b) supported by a reasonable and good faith justification.
(2) The head of the procurement unit shall include notice of the Board's right of cancellation described in Subsection (1) in each Board solicitation.

R277-122-6. Establishment of Terms and Conditions.

The head of the procurement unit shall develop standard terms and conditions for use with Board contracts and agreements.

R277-122-7. Requirements for Cost or Pricing Data.

- (1) If cost or pricing data is required by Section 63G-6a-1206 or Section R33-12-601, the head of the procurement unit shall require the person who seeks a cost-based contract to submit:
(a) factual and verifiable information related to the contractor's estimated cost for completing a project on:
(i) the date the contract is signed by both parties; or
(ii) an earlier date agreed to by both parties that is:
(A) as close as practicable to the date described in Subsection (1)(a)(i); and

(B) before prudent buyers and sellers would reasonably expect price negotiations to be affected significantly; and

(b) underlying data related to a contractor's estimate that can be reasonably expected to contribute to the soundness of estimates of future costs and the validity of determinations of costs already incurred, including:

- (i) vendor quotations;
- (ii) nonrecurring costs;
- (iii) information on changes in production methods and in production or purchasing volume;
- (iv) data supporting projections of business prospects and objectives and related operations costs;
- (v) unit-cost trends such as those associated with labor efficiency;
- (vi) make-or-buy decisions;
- (vii) estimated resources to attain business goals; or
- (viii) information on management decisions that could have a significant bearing on costs.

(2) Submission of certified cost or pricing data applies to contracts of \$50,000.00 or greater if the contract price is not established by:

- (a) adequate price competition;
- (b) established catalogue or market prices; or
- (c) law or regulation.

R277-122-8. Use of Federal Cost Principles.

The head of the procurement unit shall apply the federal cost principles described in 2 CFR Part 200, Subpart E in determining which costs expended under Board contracts are reasonable, allocable, and allowable.

R277-122-9. Grounds for Protest - Intervention in a Protest.

(1) A bidder who files a protest shall include in the bidder's submission a concise statement of the grounds for the protest, which shall include the facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:

- (a) the circumstances described in Subsections R33-16-101a(2)(a) (i) through (iii);
- (b) a provision of the solicitation alleged to be:
- (i) unduly restrictive;
- (ii) anticompetitive; or
- (iii) unlawful;
- (c) an alleged material error made by the evaluation committee or conducting procurement unit; or
- (d) the circumstances described in Subsections R33-16-101a(2)(a)(vi) and (vii).
- (2) A motion to intervene in a post-award protest may only be made by the announced awardee.
- (3) A person may intervene in a pre-award protest, if the person's proposal:
- (a) was evaluated;
- (b) found to be responsive; and
- (c) the head of the procurement unit finds the person to be responsible.

R277-122-10. Small Purchases of Procurement Items Other than Professional Services and Consultants.

(1) The Superintendent shall make small purchases in accordance with the requirements set forth in Section 63G-6a-506 and this Section R277-122-10.

(2) Unless otherwise required as part of another standard procurement process being used in conjunction with a small purchase, the Superintendent need not utilize a solicitation or provide public notice to conduct a small purchase.

(3) The Superintendent may make a small purchase of a procurement item other than a professional service by:

(a) direct award without seeking competitive bids or quotes up to the following threshold amounts:

(i) \$3,500 for one or more procurement items purchased at the same time from one source; and

(ii) \$50,000 for multiple procurement items purchased in a 12-month period from one source; and

(b) seeking competitive quotes from a minimum of two vendors and purchasing the procurement item from the responsible vendor offering the lowest quote for a purchase of

up to \$50,000 for one or more procurement items purchased at the same time from a single source.

(4) When conducting a purchase under Subsection (3)(b) in conjunction with an approved vendor list, the Superintendent:

(a)(i) may obtain quotes from all the vendors on the approved vendor list; or
(ii) may obtain quotes from a minimum of two vendors on the approved vendor list, using one or more of the following methods to select vendors from whom to obtain quotes:

(A) a rotation system, organized alphabetically, numerically, or randomly;
(B) the geographic area serviced by each vendor;
(C) each vendor's particular expertise or field;
(D) solicitation of an additional quote from the vendor that provided the lowest quote on the most recently completed procurement conducted by the Board using the approved vendor list; or

(E) another method approved by the head of the procurement unit;
(b) shall document that all vendors on the approved vendor list have a fair and equitable opportunity to obtain a contract; and

(c) shall purchase the procurement item from the responsible vendor on the approved list offering the lowest quote.

(5) Whenever practicable, the Superintendent shall use a rotation system or other system designed to allow for competition when using a small purchase process.

(6) In the process of obtaining a competitive quote, the Superintendent Shall record and maintain the following as a government record:

(a) the names of the vendors from whom quotes were requested and received; and
(b) the date of receipt and amount of each quote.

(7) The Superintendent shall comply with all applicable laws and rules in the conduct of small purchases, including:

(a) Subsection 63G-6a-506(8);
(b) Title 63G, Chapter 6a, Part 24, Unlawful Conduct and Penalties; and
(c) Sections R33-24-104 through R33-24-106.

R277-122-11. Small Purchases of Professional Service Providers and Consultants.

(1) The Superintendent shall make small purchases of professional services in

accordance with the requirements set forth in Section 63G-6a-506 and this Section R277-122-11.

(2) Unless otherwise required as part of another standard procurement process being used in conjunction with a small purchase, the Superintendent need not utilize a solicitation or provide public notice to conduct a small purchase of professional services.

(3) The Superintendent may procure professional services:

(a) up to a maximum of \$3,500 by direct negotiation with any professional services provider or consultant determined in writing by the Superintendent to be qualified to provide the professional service; and

(b) up to a maximum of \$100,000 by:

(i) obtaining quotes from a minimum of three professional services providers or consultants determine in writing by the Superintendent to be qualified to provide the professional services; and

(ii) making the purchase from the professional service provider or consultant determined in writing by the Superintendent to provide the Board with the best value, comparing qualifications and price.

(4) The Superintendent shall comply with all applicable laws and rules in the conduct of small purchases for professional services, including:

(a) Subsection 63G-6a-506(8);

(b) Title 63G, Chapter 6a, Part 24, Unlawful Conduct and Penalties; and

(c) Sections R33-24-104 through R33-24-106.

KEY: procurement, efficiency

Date of Enactment or Last Substantive Amendment: ~~[July 10, 2017]~~2018

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53A-1-401; 63G, Chapter 6a